

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

TUESDAY, THE 29TH AUGUST 2006 / 7TH BHADRA 1928

ST.Rev..No. 126 of 2004

TA.420/2002 of STAT ADDL.BENCH, KOTTAYAM

.....

PETITIONER/APPELLANT:

**M/S. THAMARAPALLY RUBBER CO. LTD.,
POST BOX NO.1, KOTTAYAM, REPRESENTED BY ITS
DIRECTOR SRI. ALEX GEORGE.**

**BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS
SRI.JOSEPH KODIANTHARA**

RESPONDENT/RESPONDENT:

**STATE OF KERALA, REPRESENTED BY THE
SECRETARY (TAXES), THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 29/08/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

**C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.**

S.T. REV. NO. 126 OF 2004

Dated this the 29th day of August, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised is whether the tribunal is justified in confirming the assessment of royalty received by petitioner for sale of rock from rubber estate owned by it. Tribunal upheld the levy on the ground that royalty received is sale consideration for sale of rock which is incidental to business and hence taxable. According to counsel for petitioner, petitioner is engaged only in rubber cultivation and is not engaged in any other business, trade or commerce, to make the transaction liable as incidental to business or trade or commerce. Learned Special Government Pleader, on the other hand, submitted that under the definition of “goods” anything attached or forming part of land is also included. The question, therefore, is whether rock formation in land comes within the definition of “goods” under Section 2(xii) of the KGST Act. Definition of “dealer” under Section 2(viii)

includes a person engaged in production of goods by manufacture, agriculture or horticulture. Therefore, agriculturist engaged in production of goods is liable to tax as a dealer. Transactions incidental to agriculture involving production and sale of goods attract tax, if it is done by a person answering the description of “dealer” and the item sold is “goods” as defined under the Act. Rock comes within the definition of “goods” and rubber planter within the definition of “dealer”. So much so, sale of rock by a rubber planter engaged in production of rubber attracts levy of sales tax. Even though counsel contended that what is received is not sale price, but is royalty, we find royalty is only a name used for price, because “royalty” understood in law is payable to Government under Mineral Concession Rules. Since royalty received is price received for sale of rock, the transaction is rightly taxed and we, therefore, confirm the order of the tribunal. We also find that the Supreme Court has in the decision in State of Tamil Nadu v. Sakti Estate ((1989) 73 STC 209) held that a planter in coffee and cardamom selling

unwanted trees in the form of firewood and timber, would be liable to pay sales tax on such items, which supports the view taken by us. Accordingly, the S.T. Rev. Case is dismissed.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.